THE CAPITAL GROUP, INC.

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VIA OVERNIGHT COURIER

William Canton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket Nos. 94-150, 92-51 and 87-154; FCC 94-324

Dear Mr. Canton:

The Capital Group Companies, Inc. (CG) is pleased to provide comments on the Notice of Proposed Rulemaking (Notice) regarding attribution rules for the broadcast industry. The CG organization provides investment management services primarily to institutional clients, including mutual funds, pension funds, endowments and trusts, and currently has over $150 billion of assets under management.

As further discussed below, we believe that the Commission's proposal to increase the attribution benchmark to 10 percent (and 20 percent for passive investors) would best serve the public interest, as such change will facilitate capital formation within the broadcast industry without undermining any of the Commission's efforts to prevent control or influence over broadcasters. Further, we urge the Commission to consider adding investment advisers to the category of "passive investors" covered by the 20 percent limit as advisers are generally accorded such status in similar contexts which differentiate between types of investors.

We understand from the Notice that as the Commission looks to balance the various interests regarding broadcast ownership, it is specifically seeking (1) empirical evidence to support the correlation between higher attribution limits and the facilitation of capital formation; and (2) assurances that raising such limits will not unduly increase the ability of persons to control or influence broadcasters.

Regarding empirical support, set forth below are several sets of statistics from 1984 and 1994 to

help the Commission focus on changes in the financial environment since they last reviewed the attribution rules:

	12/31/84	12/31/94	Percent increase
1. Capitalization of all New York Stock Exchange and NASDAQ companies[1]	$1.793 trillion	$5.267 trillion	294%
2. Assets under management: stock mutual funds[2]	$83.1 billion	$ 867.4 billion	1,044%

We note that for the ten years ending 12/31/94, the pool of assets managed by mutual funds investing in stocks has grown at a rate far exceeding the rate of growth of the capital markets in general as represented by the combined capitalization of all NYSE and NASDAQ companies. As particular mutual fund complexes have grown tremendously during this time as well, the current 10% attribution limit imposes a barrier to further investment, especially when applied on an aggregate basis to funds under a common management. It is our understanding that the assets under management by other passive investors (insurance companies and banks trust departments) have grown substantially during this time as well. We believe it is reasonable to infer from the above that the current 10% attribution limit for passive investors has the effect of channeling investment away from broadcasting and into other industries and areas not subject to regulatory limits. This is particularly detrimental to smaller broadcasters (with a lower capitalization level) as it takes fewer investment dollars to reach a 10 percent position vis-a-vis larger broadcasters.

We do not believe that it serves the public interest to limit investment flows into the broadcast arena particularly at a time when broadcasters may be especially in need of additional capital to make needed investments (e.g., to finance digital technologies), or to compete with other providers for the entertainment audience (e.g., cable, video, multi-media). As the Commission noted in its 1984 review of these attribution rules,[3] the benchmarks should not be unduly restrictive as a result of changes in the broadcast industry and investment community; to the extent this rationale is still operative, we believe that the significant shift in the source of capital to passive investors in recent years now makes the current limits unduly restrictive.

We understand that the Commission is concerned that raising the attribution limits should not enable shareholders to exert control or influence over broadcasters. First, it is our understanding that the vast majority of mutual funds (including those managed by the CG organization) have

[1] Sources: New York Stock Exchange Fact Book 1985, 1995; 1994 NASDAQ Fact Book and Company Directory, NASDAQ.

[2] Source: Investment Company Institute.

[3] Attribution Order, 97 FCC 2d at 1002.

adopted restrictions against investing for the purposes of management or control. Further, such restrictions are typically adopted as "fundamental policies" which may not be changed without the approval of the fund's shareholders. We note that under Section 2(a)(9) of the Investment Company Act of 1940,[4] a presumption of control exists at 25 percent ownership of a company's voting securities.

As regards the concept of "influence," the Commission has looked to "what interests in a licensee convey a realistic potential to affect its programming and other core operations."[5] We do not believe that minority shareholders have the ability to affect day to day management of a company, which in a broadcaster's context would include programming or other core operations. The basic rights of shareholders are to elect a company's board and auditors, and to vote on matters of extraordinary economic importance (e.g., mergers, reorganizations, sale of substantially all assets, etc.). For broadcasters whose shares are publicly traded, we note that under Rule 14a-8(c)(7)[6] of the Securities Exchange Act of 1934 (the 1934 Act), the broadcaster can omit shareholder proposals for proxy statements which relate to "the conduct of the ordinary operations" of the broadcaster. The Securities and Exchange Commission (SEC) has issued several "no-action" letters which have consistently confirmed that shareholder proposals to impose programming or other operational restrictions on a broadcaster may be omitted under this rule.[7]

We note that in considering a standard to define influence or control (re: non-passive investors), the Commission is seeking comments on the possible applicability of other agency benchmarks as may be consistent with the Commission's goals. While the Commission indicated in the Notice that the SEC's 5 percent benchmark under Section 13(d) of the 1934 Act may be most appropriate, we believe that there is support for a 10 percent baseline for non-passive investors. First, we note that the SEC's 10 percent standard under Rule 16a-1 of the 1934 Act regarding short swing profits may be a better analogy than Section 13(d). The Commission cites the

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[4] 15 U.S.C. 80a-1, et seq.

[5] Attribution Order, 97 FCC 2d at 1005.

[6] 17 C.F.R. 240.14a-8.

[7] See, e.g., General Electric Company, SEC No-Action Letter (February 2, 1993) (1993 SEC No-Act. LEXIS 172) (requiring board of directors to report on policies regarding presentation of role models relates to ordinary business operations, i.e. the nature, content and presentation of television programming), CBS, Inc., SEC No-Action Letter (March 24, 1992) (1992 SEC No-Act. LEXIS 430) (content of news broadcasts is a matter relating to ordinary business operations), General Electric Company, SEC No-Action Letter (January 30, 1989) (1989 SEC No-Act. LEXIS 83) (whether to establish broadcast standards unit to enforce advertising standards regarding violence and sex relates to ordinary business operations), Capital Cities/ABC, Inc., SEC No-Action Letter (March 23, 1987) (1987 SEC No-Act. LEXIS 1888) (requiring board of directors to report on policies regarding sensitive, controversial or violent portrayals and employment of racial minorities and women in acting roles and on production crews relates to ordinary business operations, i.e. the nature, presentation and content of television programming).

Section 13(d) benchmark as "directed to identifying interests with the potential for significance for influence or control;"[8] however, we would point out that the intent of the Section 13(d) disclosure at 5 percent is moreover to address the materiality of information affecting stock prices (as may relate to a potential change in control at a much higher level of ownership obtained through a possible tender offer or other mechanism). In contrast, the SEC's treatment of control in Rule 16a-1 is more direct, as 10 percent is the threshold to justify substantive restrictions that apply to persons who can be presumed to have access to inside information due to their ability to influence or control the issuer based on their level of equity ownership.

Another useful analogy, not mentioned in the Notice, is the standards applied in the banking and thrift industry. We believe that these standards may be particularly helpful to the Commission as both banking and broadcasting industries might be considered "special" due to the overriding public interests impacted by the operations of these industries (for banking, the potential to impact national monetary policy and access to credit justifies the strict regulatory oversight of entrants into and participants within the industry). Under the relevant statutes and regulations in the banking and thrift areas, there is a conclusive presumption of control at 25 percent; a rebuttable presumption of control for holdings between 10-25 percent; and a presumption of no control under 10 percent.[9]

In determining which investors should be covered by the 10 percent baseline and which under the 20 percent limit, we believe that it is appropriate to extend the category of passive investors to include investments advisors (whether registered with the SEC or covered by a specific exemption from registration, such as status as a bank). In support of this, we point to the inclusion of advisers in the institutional investor category under both Rule 13d-1(which affords a liberalized disclosure format and schedule for eligible institutional investors filing on Form 13G in recognition that such investors routinely reach the 5 percent level and do not have any intent of exercising influence or control) and Rule 16a-1 of the 1934 Act, discussed above.

Thus, we believe that the weight of evidence supports the proposal to raise the attribution limits. As access to capital is crucial to broadcasters' long term viability, freer access to capital will enable them to finance needed investments in technology and programming. As such, broadcasters will be better able to serve the public interest.

Sincerely,

Michael A. Burik
Senior Counsel

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[8] Attribution Order, 97 FCC 2d at 1006-7.

[9] See, 12 U.S.C. 1481 et seq., 1467a, and 1817(j).